

**EAST VALLEY INJURY LAW**  
1525 South Greenfield Road  
Mesa, Arizona 85206  
(480) 542-5000  
Robert L. Greer (SBN 005372)  
[rlgreer@evilaw.com](mailto:rlgreer@evilaw.com)

**SAUCEDO HARRIGAN APODACA  
GRIESMEYER APODACA PC**  
800 Lomas Blvd. NW, Suite 200  
Albuquerque, NM 87102  
(505) 338-3945  
Christopher T. Saucedo (pro hac vice)  
Daniel C. Apodaca (pro hac vice)  
[chris@shalawnm.com](mailto:chris@shalawnm.com)  
[daniel@shalawnm.com](mailto:daniel@shalawnm.com)  
*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Griselda Sanchez, individually  
and on behalf of all statutory beneficiaries  
of Levi Sanchez-Henry, deceased

Plaintiff.

vs.

Lily Transportation Corp.,  
Andrew Barrett, a single man.

Defendants.

**Case No.: 3:23-cv-08117-JJT**

**PLAINTIFF'S REPLY IN SUPPORT  
OF MOTION FOR LEAVE TO  
AMEND COMPLAINT TO ADD  
PUNITIVE DAMAGES CLAIM**

1 COME NOW, the Plaintiffs, by and through undersigned counsel, and hereby file  
2 this Reply in Support of their Motion for Leave to Amend Complaint to Add a Punitive  
3 Damages Claim.

#### 4 **Reply**

5 In their Response, Defendants attempt to minimize their actions and inactions in  
6 this matter by describing the actions of Mr. Barrett as glancing down “briefly” before  
7 the accident that is the subject of this Complaint. However, the real wrongdoings of this  
8 matter occurred in the hours and months prior to the subject crash. Defendants  
9 categorize their knowledge of Mr. Barrett’s driving habits to be limited to “forty-one  
10 prior triggering events for inattentive driving,” which is only partially accurate. Instead,  
11 the logs provided in discovery show that there was a total of 116 “triggering events”  
12 related to Mr. Barrett’s driving habits sent by the Samsara system to Lily between the  
13 period of October 27, 2021, and December 17, 2021, all of which, according to the  
14 testimony of Mr. Barrett were ignored by Lily. Lily was being provided with an average  
15 of over two alerts per day about the poor driving habits of Mr. Barrett, and instead of  
16 taking any corrective action to address those behaviors, Lily consciously disregarded the  
17 need to do so. This goes beyond the simple “failure to discipline” that Defendants  
18 attempt to cache Plaintiffs’ allegations as, but instead is evidence of the “evil mind”  
19 necessary to establish punitive damages against Lily. This is further established by the  
20 expert opinion of Mr. David Stopper that “Lily Transportation exhibited a conscious  
21 indifference to the safety of the monitoring public.” This conscious indifference to the  
22 safety of the monitoring public is the type of behavior which would show a “conscious  
23 disregard of a risk” sufficient under *Swift Tansp. Co. of Ariz. L.L.C. v. Carman in & for*  
24 *Cnty. Of Yavapai*, 253 Ariz. 499, ¶25.

25 In looking at the actions of Mr. Barrett, the video snippets of the minutes and  
26 hours leading up to the subject accident show that Mr. Barrett was driving distracted  
27 and would often be engaged with his phone. To what extent Mr. Barrett was engaged  
28 with his phone will likely never be known, as Plaintiffs understand that the phone used

1 by Mr. Barrett was deliberately wiped of all data in the two and a half hours leading up  
2 to the accident, and likely much more. Thus, Plaintiffs have been deprived of the  
3 opportunity to show a jury just what Mr. Barrett was doing with his phone in the hours  
4 and minutes leading up to the crash. Though it may be true that videos of the minutes  
5 leading up to the subject crash seemingly show that Mr. Barrett was listening to music  
6 via Spotify on his phone, this begs the question, why did Mr. Barrett find it necessary to  
7 delete all evidence on his phone if he was simply listening to Christmas music?  
8 Plaintiffs will be requesting a spoliation instruction on the issue of Mr. Barrett's  
9 destruction of evidence, and that upon the jury being provided with said instruction, it  
10 will be up to them to determine if they believe there was evidence to support a finding  
11 of "outrageous, oppressive or intolerable" conduct of Mr. Barrett sufficient to award  
12 punitive damages.

13 ***1. Plaintiffs' request for the addition of punitive damages is not futile.***

14 Defendants' primary argument in opposing the filing of the First Amended  
15 Complaint is on the grounds that they believe the requested addition of punitive  
16 damages is futile. This simply is not the case. "[A] proposed amendment is futile only if  
17 no set of facts can be proven under the amendment to the pleadings that would constitute  
18 a valid and sufficient claim or defense." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214  
19 (9th Cir. 1988). Defendants argue that Plaintiffs "failed to proffer any evidence that  
20 would establish a *prima facie* showing of punitive damages," seemingly arguing a  
21 summary judgment standard under Fed. R. Civ. P. Rule 56. However, "futility is most  
22 frequently at issue when the original complaint, at its core, is so factually or legally  
23 flawed that it could not be saved by any proposed amendment, and where granting leave  
24 to amend the complaint would amount to nothing more than an exercise in futility by the  
25 district court." *Melendres v. Arpaio*, 2008 WL 4174918 (D. Ariz, 2008)(internal  
26 citations and quotations omitted). As Defendants later note, the Ninth Circuit has held  
27 that leave may be denied only "if the proposed amendment...would be subject to  
28 dismissal." *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018).

1 In the matter before this Court, the issue of punitive damages against both  
2 Defendant Barrett, and Lily is not futile and would not be subject to dismissal at the  
3 pleading stage. Taking true all facts properly pled in the First Amended Complaint,  
4 Plaintiffs have met their burden to plausibly establish a claim for punitive damages. As  
5 to Lily, Plaintiffs plea the “evil mind” as required by *Swift Transp. Co. of Ariz. L.L.C. v.*  
6 *Carman*, 253 Ariz. 499 (2022), by pleading that despite having a documented recording  
7 of 116 events that were triggered by the Samsara system, Lily at no point disciplined  
8 Mr. Barret, and at no point followed up or otherwise spoke with Mr. Barrett. *See*  
9 *generally* Proposed First Amended Complaint, ¶¶43-45. In doing so, and as noted by  
10 Plaintiffs’ expert, Mr. David Stopper, Defendant Lily exhibited a “conscious  
11 indifference to the safety of the motoring public.” *Id.* at *Id.* at 46. This is more than the  
12 mere reciting of legal statements of an element of a claim, but instead is the pleading of  
13 a factual basis, if proven, to establish punitive damages in the claim. Whether a jury  
14 ultimately agrees that Lily acted with a “evil mind,” is a factual question that should be  
15 allowed to eventually be presented to a jury.

16 As to Mr. Barrett, the “evil mind” necessary to establish punitive damages is also  
17 properly pled in the First Amended Complaint. Plaintiffs’ plea that Defendant Barrett  
18 was noted to have been driving while engaged with his cell phone at various times in the  
19 minutes and hours leading up to the crash. *See* First Amended Complaint, ¶49. Though  
20 Plaintiffs agree that generally speaking, as per *Swift*, engagement with a cell phone, in of  
21 itself does not establish the “evil mind.” However, *Swift* doesn’t eliminate the possibility  
22 that some level of severity of action, when engaged with a cell phone while driving,  
23 could establish punitive damages. *Swift*, 235 Ariz. 499, ¶30 (holding “we therefore look  
24 to the severity of [defendant’s] conduct to determine whether there is ‘something more’  
25 than gross negligence that evinces an evil mind.). Plaintiffs continue in the First  
26 Amended Complaint to show that the opportunity to show that “severity” was destroyed  
27 when Mr. Barrett consciously chose to destroy and wipe all evidence stored on his cell  
28 phone for at least the two and a half hours before the accident (and likely more). *See*  
First Amended Complaint, ¶¶51-53. Just as the question as to whether Lily was acting

1 with an “evil heart” is a question of fact to be decided by the jury, the question as to  
2 what Mr. Barrett is hiding in his efforts to destroy evidence, and thus whether there was  
3 “something more” as required by *Swift*, should also be decided by a jury.

4 **2. No bad faith or undue delay**

5 Defendants next suggest that the Motion for Leave to file the First Amended  
6 Complaint is nothing more than bad faith and with undue delay. As argued in the  
7 Motion, in looking at whether seeking leave was done in bad faith, a court will look to  
8 see if the actions are a mere fishing expedition, or a delay tactic. *See Johnson v. Runnels*,  
9 2009 U.S. Dist. LEXIS 25527 (E.D. Cal. 2009). Neither of these scenarios are present  
10 with Plaintiffs’ Motion for Leave. Plaintiffs are seeking to amend to allow for additional  
11 damages, and are not doing so in an attempt to delay. In fact, as Defendants note in their  
12 Response, there was a recent expansion of the fact discovery deadline to January 10,  
13 2025, which further limits any potential claims of prejudice or delay. *See* Amended  
14 Scheduling Order (Doc. 118).

15 There has been no undue delay in Plaintiffs’ efforts to bring forward the Motion  
16 for Leave to file the First Amended Complaint. Defendants argue that Plaintiffs were  
17 aware of the dash cam footage of Mr. Barrett over a year ago, and that the video briefly  
18 showed Mr. Barrett glancing down. Though that may be true, this only highlights that  
19 the evidence of Mr. Barrett’s “evil mind” was not discovered until just recently. The  
20 initial 10-second clip leading to the accident did not give enough of a factual basis for  
21 Plaintiffs to determine or argue, without futility, that Mr. Barrett’s actions rose to the  
22 level sufficient under *Swift*. Instead, the evidence of Mr. Barrett’s evil mind was only  
23 established when the documents provided by Verizon on October 23, 2024, furthered the  
24 notion that Mr. Barrett has destroyed evidence on his phone. Though it may be true that  
25 evidence related to the “evil mind” of Lily has been suspected as far back as the  
26 production of the Samsara Logs and video snippets on July 23, 2024, Plaintiffs have  
27 been seeking deposition of Lily’s corporate representatives since August 8, 2024, to  
28 fully establish the factual basis on that issue. The depositions of Mike Reardon (Mr.  
Barrett’s supervisor) and Sherief Boutros (Safety Manager of Lily) continue to be

1 delayed, due to Defense counsel's requests for rescheduling, and efforts to otherwise  
2 limit the topics of discussion. It is anticipated that the depositions of Mr. Boutros and  
3 Mr. Reardon will further establish the "evil mind" of Lily by establishing to what extent  
4 Lily knew, and otherwise disregarded the alerts regarding Mr. Barrett's poor driving  
5 habits. As discovery is still pending on this matter, Defendants suffer no prejudice by  
6 allowing a theory of punitive damages to move forward. Should discovery show that the  
7 actions of Lily did not raise to the level under *Swift*, Defendants would still be able to  
8 bring whatever motions they see fit to limit the claims that are presented to a jury.  
9 However, Plaintiffs have determined that filing the Motion for Leave was necessary to  
10 avoid any further delay in the discovery process, and so that all parties are aware of the  
11 topics of discussion that are to occur in the upcoming depositions.

### 12 **3. No undue prejudice**

13 Defendants finally argue that the First Amended Complaint would cause undue  
14 prejudice to them, noting that they have concerns that there may need to be additional  
15 discovery on the finances of Lily, and there may need to be additional experts disclosed.  
16 Though it may be true that some additional discovery may be necessary on the issues,  
17 the overwhelming majority of discovery on this has either already been completed or is  
18 in the process of being completed through the set fact witness depositions. The First  
19 Amended Complaint does not bring forth any new theories of the case, but instead is  
20 focusing on the extent and depth of potential damages available. The only undue  
21 prejudice that has occurred in this matter, is the prejudice that Plaintiffs have faced due  
22 to Defendant's delay tactics, and Mr. Barrett's efforts to hide or destroy evidence. By  
23 allowing the First Amended Complaint, this Court would be actually reducing the  
24 prejudice that Plaintiffs have faced, and instead would be complying with the spirit of  
25 Rule 15—to facilitate a decision on the merits rather than on the pleadings or  
26 technicalities. *See Eldrige v. Block*, 832 F.2d 1132, 1135 (9th Cir. 1987).

### 27 **Conclusion**

28 The First Amended Complaint has been carefully crafted by Plaintiffs in an effort  
to state plausible claims against Defendant Lily and Mr. Barrett for punitive damages,

1 given the limitations of discovery that Defendants have placed on this matter. In doing  
 2 so, the First Amended Complaint is not futile, and was not filed with undue delay or in  
 3 bad faith. Any prejudice that Defendants face in this matter, should the First Amended  
 4 Complaint be granted, is not unfairly prejudicial, as they have been aware of the factual  
 5 basis which may establish punitive damages throughout the litigation. As such, Plaintiffs  
 6 respectfully ask that this Court grant the Motion for Leave to File the First Amended  
 7 Complaint as said leave should be “freely given when justice so requires.” Fed. R. Civ.  
 8 P. 15(a)(2).

9  
 10 RESPECTFULLY SUBMITTED this 6th day of December 2024,

11 **SAUCEDO HARRIGAN APODACA**  
 12 **GRIESMEYER APODACA PC**

13 By: /s/Christopher T. Saucedo

14 Christopher T. Saucedo

15 Daniel C. Apodaca

16 800 Lomas Blvd NW, Suite 200

17 Albuquerque, NM 87102

18 (505) 338-3945

19 [chris@shalawnm.com](mailto:chris@shalawnm.com)

20 [daniel@shalawnm.com](mailto:daniel@shalawnm.com)

21 *Attorney for Plaintiffs*

## 22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on this 6th day of December, 2024, I caused the foregoing document to be  
 24 filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on  
 25 counsel of record via the Court’s CM/ECF system.

26 By: /s/ Christopher T. Saucedo

27 Christopher T. Saucedo